

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CHRIS MODONAS,

Petitioner,

Case Number 08-11284
Honorable Thomas L. Ludington

v.

THOMAS BELL,

Respondent.

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ORDER DENYING MOTION FOR RELEASE FROM CUSTODY

Petitioner Chris Modonas's motion for release from custody [Dkt. # 5] is presently before the Court. On March 25, 2008, Petitioner filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. On March 31, 2008, Magistrate Judge R. Steven Whalen signed an order directing responsive pleadings from Respondent by October 2, 2008.

This Court initially notes that the Federal Rules of Appellate Procedure do not apply to actions in a district court. *Rawson v. Sears, Roebuck & Co.*, 678 F. Supp. 820, 822 (D.Colo. 1988)(citing to Fed.R.App.P. 1(a)). Petitioner would therefore be unable to invoke Rule 23 (a) and (c) of the Federal Rules of Appellate Procedure to obtain release. Rather, to receive bond pending a decision on the merits of a habeas corpus petition, a petitioner must show a substantial claim of law based on the facts and exceptional circumstances justifying special treatment in the interest of justice. *Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993) (*quoting Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990)); *See also Nash v. Eberlin*, 437 F.3d 519, 526, n. 10 (6th Cir. 2006). There will be

few occasions where a habeas petitioner meets this standard. *Dotson*, 900 F.2d at 79. Federal courts may grant bail when granting the writ. *See Sizemore v. District Court*, 735 F.2d 204, 208 (6th Cir. 1984). By implication, a federal court should not grant bail under other circumstances.

Here, in light of the fact that Petitioner failed to establish that he would prevail on the merits of his claims, he is not entitled to release on bail. *See Nieves v. Thomas*, 256 F. Supp. 2d 169, 171 (S.D.N.Y. 2003).

Accordingly, it is **ORDERED** that Petitioner's motion for release from custody [Dkt. # 5] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: June 6, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 6, 2008.

s/Tracy A. Jacobs
TRACY A. JACOBS